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06-0603

A Little Bit of Heaven

vs.

Peoples Gas Light and Coke Company

**Complaint as to extremely high gas bills
over the periods of May 2005 to present,
September 1, 2006, in Chicago, Illinois.**

COMPLAINANT'S INITIAL BRIEF

A LITTLE BIT OF HEAVEN, by its attorneys, Howard & Howard Attorneys, P.C., respectfully submits its Initial Brief in this matter.

I. Introduction

This case, and a companion case – ICC 06-0023, represent an example of the extreme customer hardship and prejudice resulting from and attributable to the flagrant and repeated violation by Peoples Gas Light and Coke, a regulated public utility, of the long-established, clear meter reading requirements contained both in the Public Utilities Act and in the Illinois Commerce Commission's rules promulgated thereunder. The Respondent in these companion cases based the great majority of its bills rendered to the Complainant, as well as a disconnection of service, on estimated usage rather than actual meter reads over a period in excess of seven years starting in late 1999, without good reason and in direct contravention of applicable law and its own policies and procedures.

II. Background and Relevant Facts

A Little Bit of Heaven ("LBH") is a homeless shelter located on the south side of Chicago, at 11321 S. Wentworth Avenue, and is funded by the City of Chicago. LBH provides

food, clothing, and an overnight stay for homeless men and women. Edward Davenport is a member of LBH's Board of Directors. Its CEO is Laura Braxton, and Sheila Braxton serves as the Executive Director, with day-to-day management responsibilities. Sheila Braxton also lives at the LBH facility. LBH occupies a four story building, with about 7,200 square feet in total, and has a basement where a boiler and gas meter are located. Its gas-using appliances consist of a boiler for steam heat and hot water, a water tank, a double oven, six-burner stove, and a two-basket deep fryer. The facility has zoned heating, and each floor has its own thermostat.

On January 10, 2006, Complainant filed its initial verified Formal Complaint in Docket 06-0023 with the Illinois Commerce Commission ("Commission"), under section 10-108 of the Public Utilities Act (220 ILCS 5/10-108), and Section 200.170 of the Commission's Rules of Practice (83 Ill. Adm. Code Sec. 200.170), against Peoples Gas Light and Coke Company ("Peoples"). Complainant alleged violations of Section 280 of the Illinois Administrative Code pertaining to the time period up to May 2005, when its gas service was disconnected due to nonpayment of its gas utility bills. Subsequently, LBH filed a second complaint on September 5, 2006, pertaining to excessively high gas utility bills for the time period May 2005 through September 2006. This second complaint was assigned a separate docket number, 06-0603, but the same Administrative Law Judge ("ALJ") as the first complaint. Pursuant to the ALJ's ruling (06-0023 Tr. 175), the records in the two cases are to be shared.

An initial hearing in the first case was held on March 22, 2006, at the Commission's offices in Chicago. A second hearing was held on June 5, 2006. Complainant was not represented by counsel at the first two hearings. Peoples filed a motion to dismiss on June 19, 2006, based on the fact that Laura Braxton was not the customer of record, that Peoples' gas bills had been sent to Edward Davenport c/o A Little Bit of Heaven, and that because LBH is an

Illinois not-for-profit corporation, it must be represented by an attorney. A response to the motion was filed by Edward Davenport on August 14, 2006. In his response, Mr. Davenport disclosed that he is on the Board of Directors for LBH, that he had granted permission to Laura Braxton to deal with the Peoples gas bill dispute, and that he was unaware that LBH needed to be represented by an attorney. On August 16, 2006, Peoples filed a motion to file instant its reply to LBH's response, and in its reply, Peoples' asked that the matter be marked heard and taken. Another hearing was held on September 1, 2006, at which Mr. Davenport appeared on behalf of Complainant. At the September 1 hearing, Complainant stated it had filed an informal complaint against Peoples covering a more recent period of time. Counsel for Peoples represented that the recent informal complaint had been addressed by Peoples and was now closed. The ALJ ruled that Peoples' request that the matter be marked heard and taken should be denied. (06-0023 Tr. 96). The ALJ directed Complainant to file a new formal complaint pertaining to its complaint about utility services for the time period, May 2005 forward, subsequent to the period covered by the complaint in the instant proceeding. The matter was continued at the conclusion of the September 1 hearing. The second complaint was filed on September 5, 2006, and assigned Docket 06-0603.

Counsel for Complainant entered his appearance and participated by phone in the next hearing, held on October 5, 2006. Subsequently, an additional hearing was held on November 9, 2006, on which date a hearing on the second complaint was also held. The parties stipulated to certain statements made at a prior hearing made by John Riordan, Group Supervisor in the Billing Control Department of Peoples. Peoples took an actual meter read for LBH in February 2004. Thereafter, all billings were based on estimated reads until the next actual reading in December 2004. The December 2004 bill totaled \$8,260.34, of which \$6,196.14 represented a

“balloon” billing for usage that had been underestimated for the nine intervening months since the latest actual reading. (06-0023 Tr. 121-122). Laura Braxton then testified that she has been CEO of LBH since 1999. Sheila Braxton also testified on behalf of Complainant. She has been Executive Director since 2000; her duties include the day-to-day management of LBH, including utility matters. (06-0023 Tr. 130). LBH has about 55-60 clientele on average. The LBH facility is four stories, about 7,200 square feet in total, plus a basement level where a boiler and the gas meter are located. The facility has a double oven and six-burner stove, a two-basket fryer, a hot water tank, and a boiler for steam heat and hot water. Heating is zoned, and every floor has its own thermostat. (06-0023 Tr. 143). The boiler is shut down in April or May, and restarted in October.

Ms. Braxton was asked about the gas meter and its accessibility. She testified that utility personnel are always allowed to enter the facility to read the meter, and they have never been denied. (06-0023 Tr. 138). Ms. Braxton testified that, besides herself, the other people authorized to permit access to the building are Laura Braxton, Kevin Braxton, and Danny Johnson, chief of security.

Ms. Zenetra Weatherall testified for Peoples. Ms. Weatherall has been a billing specialist for the last five years, and was in customer service for two years prior to that. She testified as to the billing history for LBH, including a transaction history from February 8, 2000, through March 13, 2006. (Peoples Ex. 1). She also sponsored, as Peoples Ex. 4, a meter reading history for LBH from September 27, 1999 through May 5, 2005. On cross-examination by counsel for Complainant, Ms. Weatherall stated that the policy of Peoples is that an actual reading should be taken at least every other month. She testified that a meter reader only goes to a customer premises to read the meter one time, and if he or she cannot gain access, the meter reader will not

make another attempt to come back to get an actual meter read. (06-0023 Tr. 179). In that case, the usage for the customer is estimated. Ms. Weatherall also provided the dates for which actual meter readings had been made between September 1999 and May 2005. In addition, Peoples' late-filed Exhibit C, at pages 3 and 5, shows the actual reads since May 2005 until May 2006. The evidence sponsored by Peoples shows that between September 1999 and May 2006 the LBH gas meter was read on the following dates:

September 27, 1999
February 14, 2000
April 1, 2000
August 17, 2000
December 15, 2000
September 12, 2001
May 14, 2002
May 18, 2002
September 18, 2002 (also meter change)
May 13, 2003
February 12, 2004
December 14, 2004
August 31, 2005
September 20, 2005
January 23, 2006
April 7, 2006
April 14, 2006

Based on Ms. Weatherall's testimony and Peoples' exhibits, it can be shown that during a period of 80 consecutive months, Peoples performed an actual reading of the gas meter for LBH a total of seventeen (17) times, or 21.25%.

Ms. Weatherall testified as to Peoples Exhibit 2 that gas service to LBH was disconnected based on a notice dated April 16, 2005. A final bill was rendered on May 19, 2005, in the amount of \$14,379.21 (Peoples 06-0023 Ex. 2). Service was reconnected on July 28, 2005, following Complainant's payment of the amount owed, \$13,316. (06-0023 Tr. 219).

Another Peoples' witness, Betty Jean Daniels, who was a Field Service Supervisor, Operations, testified that LBH's meter was to be read bi-monthly based on company procedures. (06-0023 Tr. 204). A "red flag" only goes up after six consecutive missed actual reads, over a year's time period. (06-0023 Tr. 205).

During the hearing in Docket 06-0603, Peoples' witness Ms. Daniels testified that Peoples installed an "ERT" device on Complainant's meter on April 7, 2006. (06-0603 Tr. 12). Such device permits an actual meter read by a utility vehicle from the street. Ms. Weatherall testified as to the account history from the date service was reconnected July 28, 2005, until October 18, 2006. Peoples Ex. 4 shows an amount owed of \$19,287.89, as of November 6, 2006. Ms. Weatherall agreed that Peoples' method used to recalculate and restate multiple prior months' bills is complicated and hard to understand. (06-0603 Tr. 47).

III. Argument

The Illinois legislature has long been concerned about regulated public utilities in this State not devoting the resources and exercising care to obtain actual meter reads of customer meters on a regular basis. The Public Utility Act ("Act"), in section 8-303, provides:

In order to enable the customer to ascertain whether the level of consumption is greater than the amounts billed in other billing periods and to eliminate to the fullest extent practicable consecutive estimated bills, the public utility shall make an actual meter reading at least every second billing period. If a meter reader is unable to gain access to the meter for the purpose of making an actual reading, the public utility shall take other appropriate and reasonable measures to read the meter.

(220 ILCS 5/8-303).

The foregoing, long-standing statutory requirement evinces a strong mandate to the public utilities in this State that customer meters should be actually read. The Commission rules for estimated billings appear in Section 280.80 of the Administrative Code (83 Ill. Adm. Code Sec. 280.80). Similarly, Section 280.80 requires utilities to make an actual meter reading at least

every second billing period, unless the Commission has approved a procedure used by the utility to calculate estimated bills, and the word “estimate” appears prominently on the bill’s face, in a Commission-approved manner. Section 280.80 contemplates four circumstances for which a utility is allowed to render an estimated bill for a particular billing period:

1. *the utility has taken appropriate and reasonable measures to read the meter, including but not limited to, making an appointment with the customer, scheduling readings for times other than normal business hours, and/or providing postal cards on which the customer may record the reading and mail it to the utility; or*
2. *the customer has knowingly and willfully denied reasonable access to the utility’s representative for the purpose of taking an actual reading of the meter; or*
3. *the customer has otherwise made an actual reading of the meter unnecessarily difficult; or*
4. *circumstances beyond the control of the utility make an actual reading of the meter extremely difficult.*

As a regulated public utility, Peoples clearly is subject to the foregoing meter reading requirement. See 220 ILCS 5/5-101. Peoples in this case provided no evidence of any Commission-approved estimated billing calculation procedure, and it can be seen from the numerous bills submitted into the record as exhibits in this proceeding that the word “estimate” is far from prominent; rather, the word is in small, non-bold type font in a relatively obscure section of the bill. The record is uncontroverted that Complainant has made its meter readily accessible, and Peoples offered no evidence whatsoever that it has taken any measures to read the meter other than send a meter reader by on a regular route. If the meter reader wasn’t able to read the meter for any reason, the meter reader made no attempt to return at a later time and no Peoples’ representative would contact the customer to arrange for an actual read. The record is devoid of any evidence whatsoever that Peoples has made even a feeble attempt to comply with the statute and regulations. It wasn’t until the disconnection of LBH’s gas service, in May 2006, that Peoples installed an “ERT” device so that an actual reading could be easily obtained.

The record demonstrates how difficult it was for Complainant to even understand its billings when so many estimates were made. Peoples' witness Ms. Weatherall attempted to explain (Tr. 168 – 170) how when several estimated bills have been rendered, the estimates are “backed out” and a new amount is shown on the next actual read bill. Most utility customers could hardly be expected to understand such a convoluted billing and adjustment methodology. Another example of the prejudice to Complainant's violations of the actual meter reading legal requirements occurred when Complainant received a “balloon” or make-up bill in December 2004, when a \$6,196.14 make-up of prior under-billed amounts over the previous nine months of estimated billings was included.


The Commission should clearly communicate to Peoples in this case that its egregious billing practices and flaunting of the statutory requirements and Commission rules on actual meter reads are not acceptable and will not be tolerated. Complainant suggests that an investigation into Peoples estimated billing practices would be appropriate, and that if the practices uncovered in this case are found to be systemic, then suitable fines and other remedies should be administered. For now, Complainant requests that Peoples be made to compensate Complainant for all the time, confusion and expense stemming from Peoples illegal billing practices.

WHEREFORE, Complainant requests that the Commission order that Peoples not be allowed to collect the \$19,287.89 amount showing as owed as of November 6, 2006, and that Complainant's account be credited for said amount.

Dated: February 21, 2007

Respectfully submitted,

A LITTLE BIT OF HEAVEN

By: 
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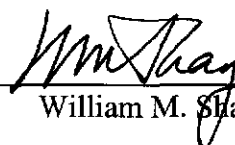
CERTIFICATE OF SERVICE

I hereby certify that on February 21, 2007, I served the foregoing
COMPLAINANT'S INITIAL BRIEF, by causing a copy to be placed in the U.S. Mail, first
class postage affixed, addressed to each of the parties indicated below:

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